

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Special Appeal No. 78 of 2004

Date of decision: 17th November, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to
The reporters for reporting? ()

- Whether the reporters be allowed to see the
judgment? ()

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 78 of 2004

Qurban Ali S/o Sri Hasmat Ali,
R/o Village Bhangari, P.O. Milap Nagar,
Tehsil Roorkee, District Haridwar. Appellant

Versus

Union of India,
Through Chief of the Army Staff,
Army Head Quarter, New Delhi & another. Respondents

Mr. B.P. Nautiyal, learned counsel on behalf of the appellant.
Mr. V.B.S. Negi, learned senior standing counsel (Central Government).

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Rajesh Tandon, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. B.P. Nautiyal, learned counsel for the appellant and Mr. V.B.S. Negi, learned senior standing counsel (Central Govt.).

2. This appeal has no merits. It is against an order passed by the learned Single of this Court dismissing the writ petition filed by the petitioner i.e. the appellant herein. By that writ petition, the petitioner i.e. the appellant herein had challenged his dismissal from Army.

3. A Summary Court Martial (SCM) was held against the petitioner by the Army authorities on the ground that the petitioner, on two occasions, over-stayed beyond the awarded annual leave. During the court martial, the petitioner admitted the over-stay, but only feebly, raised a plea that he was given some drink by somebody and on account of that, he forgot everything and behaved like an insane person. It is seen that nothing was produced before the Summary Court Martial by way of a defence witness nor any document was produced suggesting that during the period, when the petitioner remained absent unauthorizedly, the petitioner was suffering from any mental illness.

4. After his dismissal from the Army, he was, as usual, given the opportunities to file appeals. Those appeals remained pending and therefore, the petitioner approached the Allahabad High Court, which High Court, then, directed the disposal of the appeals. This was in a writ petition No. 28512 of 2000 and the date of decision was 06.07.2000. As per that, the Chief of the Army Staff, himself, disposed of the appeal of the petitioner on 19th December, 2000 by a speaking order giving reasons. The Chief of the Army Staff found that the petitioner, himself, had pleaded guilty to both the charges and hence, there was no need of giving any finding in the Summary Court Martial (SCM). The Chief of the Army Staff also found that he was given all the opportunities to lead the defence evidence, but the petitioner failed to avail those opportunities. It was also found that he was also found with a friend one Capt. Gagan Wadhera and even on that count, there was no denial of natural justice against the petitioner.

5. The learned Single Judge has relied upon this order passed by the Chief of the Army Staff and had chosen to dismiss the writ petition. The learned Judge has also noted that, thereafter, a mercy petition was filed before the President of India and that was also disposed of and the intimation of such disposal was also given to the petitioner. Even that mercy petition was rejected by a speaking order. Therefore, the learned Judge came to the conclusion that the scope in the writ petition was extremely narrow and that no discretion could be shown in favour of the petitioner.

6. Mr. B.P.Nautiyal, learned counsel for the petitioner i.e. the appellant herein, however, argues on the basis of Rule 145 of the Army Rules, 1954, which speaks as under:

“145. Finding of insanity:- Where the Court finds either that the accused, by reason of unsoundness of mind, is incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the presiding officer or in the case of summary court-

Martial, the officer holding the trial, shall date and sign the finding; and the proceedings, upon being signed by the judge-advocate (if any) shall be at once transmitted to the confirming officer or to the authority empowered to deal with its finding under Sec. 162, as the case may be.”

7. From this, the learned counsel urges that once the plea of insanity was raised by the accused, there was no question of convicting the petitioner by Summary Court Martial (SCM) and on the other hand, the officer, who was conducting the Summary Court Martial, was bound to record an finding and that finding should have been sent to the higher authorities as provided in the Rules. The learned counsel, therefore, says that since the petitioner i.e. the appellant herein has raised the plea of insanity, there was no question of proceeding further with the summary Court Martial and the necessary steps should have been taken.

8. For this purpose, we went into the whole record of the Summary Court Martial (SCM). In the Summary Court Martial, as many as four prosecution witnesses were examined. Witness No. 1 alleged that he had come to know through the petitioner that while on annual leave between 8th January, 1996 to 7th March, 1996, he was administered some substance in his drink by some unknown person resulting in his mental imbalance. No questions were put to him excepting five questions, which are all irrelevant questions, which were regarding the general behaviour of the petitioner i.e. the appellant herein, to which it was answered that at the time when the petitioner was before the Summary Court Martial, he was perfectly normal and disciplined soldier. Same thing happened in respect of the second witness and the third witness, only, was asked one question, which is as under:

“What difference you find in me when you met me on 17 Jan 96 and now?

The answer to this question was as under:

“I find that on 17 Jun 96 you were looking insane. However now you are perfectly alright and doing your duties willingly.”

9. Now, therefore, in his own statement also the accused merely stated that he was administered some substance by some unknown evil power, which resulted in his becoming insane. He, further, says that he used to wander around as he was mentally upset and could not distinguish between wrong and right and he had also lost the count of the date. He was taken to the local saints, who said that he was overpowered by some evil power and he was later on treated by those saints. This is all the material on record. It is obvious that before the Summary Court Martial, actually no documents were filed, no evidence was lead and the plea of insanity was not even substantiate. The opening words of the Rule 145 are that **“where the Court finds either that the accused, by reason of unsoundness of mind, is incapable”**. Therefore, there must be material placed before the Court and the material should be such as would be capable of being rested for a finding of insanity.

10. We find that there was no material whatsoever placed before the Summary Court Martial (SCM) so that the SCM could come to the conclusion or to a finding that where was any insanity on the part of the appellant and we cannot, again, forget the fact that the petitioner i.e. the appellant herein was a member of the Army and was absent, not on one occasion, but on two occasions. There is no explanation whatsoever as to what the appellant was doing during this. There is nothing to substantiate. The appellant was given a full opportunity of examining the defence witnesses. The appellant did not do that. This is besides the plea that the petitioner i.e. the appellant herein had admitted his guilt of remaining absent. Once an admission is made, there would be no question of further opportunity being given to the appellant.

11. In view of the above, the appeal has no merits and it is dismissed.

(Rajesh Tandon, J.)
17.11.2004

(V.S. Sirpurkar, C.J.)
17.11.2004

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